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IN THE HIGH COURT OF M.P. AT JABALPUR.

Writ petition No. 2800 of 1996.

PETITIONER

.. LAXMAN PRASAD MISHRA

aged 45 years, S/o Shri Baldeo Prasad
Mishra, Lower Division Coerk,
Krishi Upaj Mandi
BEMETARA, Distt.Durg.

VERSUS.

RESPONDENTS.

S.. KRISHI UPAJ MANDI SAMITI

BEMETARA, TAHSIL BEMETARA
DISTT.DURG.

PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2800 of 1996

Petitioner : Laxman Prasad Mishra

Versus

Respondent : Krishi Upaj Mandi Samiti Bemetara

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Shri Ravindra Agrawal, Advocate for the petitioner.

Miss Samta Jain, Advocate on behalf of Shri R.S. Marhas,
Advocate for the respondent.

ORAL ORDER

(17th April, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioner has filed this petition challenging the impugned order dated 1.7.1996 (Annexure P/3) whereby the petitioner was demoted to the post of Nakerdar on the ground that the petitioner was not having the minimum qualification i.e. matric pass for appointment on the post of Lower Division Clerk.
2. The petitioner was initially appointed as Peon/Chowkidar on 1.7.1973 thereafter the petitioner was promoted to the post of Nakerdar on 9.11.1976. The petitioner was further promoted to the post of Lower Division Clerk on 14.5.1981 (Annexure P/1) with a condition that if the petitioner failed to produce Matric Examination Certificate within a period of one year, the petitioner would be demoted to the post of Nakerdar. The petitioner could not pass the required examination of matric within a period of one year. During the course of hearing, a document dated 18.1.1983 was produced by counsel for the respondent showing that the promotion order passed earlier was cancelled and the petitioner was demoted to the post of Nakerdar. The order dated 18.1.1983 was neither filed along with the reply nor was

supported by an affidavit of its authenticity. Despite the order dated 18.1.1983, the impugned order dated 1.7.1996 was passed, which is under challenge in this petition. However, the petitioner was allowed to continue on the post of Lower Division Clerk, contrary to the condition No. 3 of the promotion order dated 14.5.1981 and order dated 18.1.1983 for about a period of 15 years. The respondent woke up from its slumber and passed the order of demotion on 1.7.1996 (Annexure P/3) without affording an opportunity of hearing or without issuing any show cause notice to the petitioner.

3. Learned counsel for the petitioner submits that the order dated 1.7.1996 was passed without following the basic principles of natural justice and fair play in action. The impugned order visits with civil consequences which affects the petitioner adversely and the prejudice is caused to the person concerned. It is well settled principle of law that an order which affects the interest of an employee adversely cannot be passed without following the principle of natural justice and fair play in action. The Supreme Court in **Bhagwan Shukla Vs. Union of India and others** (AIR 1994 SC 2480) has held as under :-

"The appellant has obviously been visited with civil consequences but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There has, thus, been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being heard. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter."

4. Miss Samta Jain, learned counsel appearing on behalf of Shri R.S. Marhas, counsel for the respondent admits the fact that the petitioner was allowed to

continue for 15 years despite the condition No. 3 in the promotion order dated 14.5.1981 whereby the petitioner was required to pass matric examination within a period of one year. It was further admitted that the impugned order was passed without issuing show cause notice or affording any opportunity of hearing to the petitioner, though the petitioner has acquired the right after working on the post of Lower Division Clerk for more than 15 years.

5. After having heard learned counsel for the parties and having perused the records appended to the petition, it is indisputably established that the petitioner was promoted on the post of Lower Division Clerk with the condition that the petitioner would be required to obtain Matric Examination Certificate within a period of one year. Even otherwise, the respondent has not followed its order dated 14.5.1981 which provides for obtaining the Matric Examination Certificate within one year period by permitting the petitioner to work for about 15 years. If the order dated 18.1.1983, as produced by the respondent in the course of hearing, without affidavit is accepted. There was no necessity of passing the impugned order dated 1.7.1996 whereby the petitioner was demoted to the post of Nakedar without affording any opportunity of hearing to the petitioner, who has acquired right to hold the post of Lower Division Clerk by virtue of the appointment order dated 14.5.1981 and by continuing for 15 years thereafter on the post of Lower Division Clerk. The impugned order has caused prejudice to the petitioner and the impugned order was passed in violation of the principle of natural justice. The Supreme Court in **Gajanan L. Pernekar Vs. State of Goa and another** { (1999) 8 SCC 378}, where identical facts were involved and there was a clear breach of principles of natural justice and violation of fair play-in-action, held that the benefit could not have been taken away without affording an opportunity of hearing.

6. For the reasons stated above, the petition succeeds and is allowed accordingly. The impugned order dated 1.7.1996 is quashed. The petitioner is entitled to all the consequential benefits. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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